

REMARKS

Reconsideration of the instant application is respectfully requested. The present submission is responsive to the Final Office Action of August 2, 2005, in which claims 20-38 are presently pending (a courtesy copy of which is provided above). Each of claims 20-38 has now been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-19 of copending Application 10/708,287. In response to the obviousness-type double patenting rejections, a terminal disclaimer in compliance with 37 CFR 1.321(c) is submitted herewith in order to overcome the provisional rejections.

Furthermore, the Applicants respectfully request reconsideration and withdrawal of the finality of the present Office Action as being premature. MPEP 706.07 indicates in pertinent part that:

“...[b]efore final rejection is in order a clear issue should be developed between the examiner and applicant. To bring the prosecution to as speedy conclusion as possible and at the same time to deal justly by both the applicant and the public, the invention as disclosed and claimed *should be thoroughly searched in the first action and the references fully applied...*” (emphasis added).

In the present application, no references have yet been applied to the invention as disclosed and claimed, either in the first Office Action of March 15, 2005 (in which a statutory double patenting rejection was issued) or in the present Final Office Action, when such a search and examination could reasonably have been conducted. The Applicants respectfully submit that it would be unjust to require the Applicants to bear the costs associated with further prosecution of the application (e.g., filing an RCE) when the claims have yet to be examined on the merits.

The copending Application 10/708,287 was originally filed by way of the EFS system on February 23, 2004. The present application was an unintentional, duplicative

iling of the '287 application, which was also filed by EFS the day after (on February 24, 2004). Once the Applicants' assignee learned that the filing fee for the present application was not refundable, the Applicants then submitted the previous amendment in this case in order to prosecute the method claims of the disclosure, while the '287 application was also amended to prosecute the structure claims of the disclosure.

Since the filing date of the '287 application precedes the filing date of the present application, the provisional obviousness-type double patenting rejections have been triggered. However, because terminal disclaimers in both applications have now been filed, the rejections have been overcome without amendment, and in a manner that does not raise any new issues. As such, the Applicants respectfully request reconsideration and withdrawal of the finality of the present Office Action, along with further examination of the pending claims on the merits. In the alternative, the Applicants respectfully submit the application is now in condition for allowance.

No new matter has been entered and no additional fees are believed to be required. However, if any fees are due with respect to this Amendment, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorneys.

Respectfully submitted,  
HAROLD PILO, ET AL.

CANTOR COLBURN LLP  
Applicants' Attorneys

By 

Sean F. Sullivan  
Registration No. 38,328  
Customer No. 29371

Date: September 29, 2005  
Address: 55 Griffin Road South, Bloomfield, CT 06002  
Telephone: (860) 286-2929